



Presentation on the Nigerian Capital Markets

By the Securities and Exchange Commission

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Introduction

1. Hon Chairman, Hon Members of the Adhoc Committee, I commend you for the conduct of the hearings and thank you for giving SEC the opportunity to make a presentation to you. In the short time I have I will concentrate on outlining the state of the Nigerian capital markets when I joined SEC in January 2010, outline some key areas of focus for the SEC in the last two years and present key recommendations including areas where the legislature can assist with building a world class capital markets

2. As had been previously highlighted the total market capitalization of equities listed on the Nigerian Stock Exchange declined from 12.6 trillion Naira at the end of March 2008 to a bottom of 3.99 trillion Naira in February of 2009. Also significant to highlight is that at the peak, banking sector stock made up more than 60% of market cap, essentially implying that where the banking sector went was where the stock market went. By January 2010, when I arrived, market cap had risen to 4.99 trillion. However investor apathy remained for a number of reasons including the problems at the Nigerian Stock Exchange, the lack of attention to market abuses that had been prevalent from 2006 to 2009, margin loans overhang, unresolved banking challenges and lack of a clearly articulated road map. These concerns were accentuated by the findings of the Central Bank/NDIC/SEC audit of the banks which were released in August 2009. One of these findings was that some key problems with the banks came from their activities in the capital markets.

Nigerian Stock Exchange

3. As you know a stock exchange is the most visible symbol of any capital market. It must exhibit the highest levels of good corporate governance, fairness and accountability. When I joined the SEC in January of 2010, my colleagues handed me briefings including a

report of an inspection of the Nigerian Stock Exchange that they had undertaken in September 2009. The findings of that inspection were shocking and included weak corporate governance, risk management and internal controls, insufficient oversight of brokerage firms and listed companies, inability to enforce its rules. The inspection team also found that more than 2,700 investor complaints lodged with the NSE had not been treated. These complaints ranged from unauthorized sale of shares, to withholding of proceeds of sale of shares. The team also found that the Exchange was 'far from implementing the provisions of the Investment and Securities Act of 2007, with respect to the maintenance of an investor protection fund. The report also highlighted a number of financial mismanagement issues including huge amounts spent on a construction project that was yet to be completed many years after inception as well as the inability to perfect the title of a key asset, the Stock Exchange HQ building. Also, assets grew by 9 times between 2006 and 2008 while expenses rose by more than 150 % from 2007 to 2008. It was therefore important to me that we engage the NSE to address these weaknesses. Unfortunately the former CEO of the NSE did not attend most of the meetings we scheduled.

4. Selection of new Leadership team of the NSE: I was informed that the NSE was implementing a transformation agenda supported by Accenture. A key element of the transformation agenda was the appointment of a new leadership team to take over from Mrs Ndi Onyiuke-Okereke and other principal officers of the Exchange. This initiative appeared to be ongoing as two senior officers had left the exchange at the end of 2009 and another left in March 2010. Given this vacuum, SEC invited the NSE to discuss the status of the implementation of this initiative. In her briefing, the former CEO of NSE indicated that they had planned to have each Council member submit two resumes each and that appointments would be made

from this closed pool of submissions. We indicated what would be acceptable to SEC is a credible, transparent and auditable process that will give all adequately qualified Nigerians an opportunity to compete, given that the NSE is a public interest entity. Despite several promises to ensure such a process, there was no attempt to have such a process until SEC intervened in August of 2010.

5. Complaints from Dealing/Council members and other stakeholders: From January to July 2010, I received several verbal complaints about the exchange having serious financial difficulties arising from undisciplined spending and imprudence purportedly exhibited by the then management of the NSE. A number of complainants verbally indicated that they were concerned about an imminent bankruptcy of the Exchange. This concern was reiterated in a letter dated 21 July 2010, that we received from a council member who indicated 'that unless something was done urgently the NSE may soon face bankruptcy'. A number of stakeholders had also reported these concerns to SEC's supervisors and in some cases were already indicating that SEC was unwilling and unable to intervene despite its powers to do so and the grave circumstances that the NSE faced. As you know this was widely covered in local and international media and culminated in BBC Television running a story during its prime time international news bulletin about the imminent bankruptcy of the NSE.

Financial Mismanagement & Fraud

6. It was brought to our attention, that there were incidences of financial skimming, misappropriation of income and assets, false accounting, misrepresentation, questionable transactions and financial gratification. For instance, the NSE bought a yacht for N37million and wrote down the book value within one year by recognizing it in the books as a gift presented during its 2008 Long Service Award (LSA) yet there are no records of the beneficiary. The Exchange also expended N186million on procuring 165 Rolex

watches as gifts for awardees out of which only 73 were actually presented to the awardees. The outstanding 92 Rolex watches valued at N99.5million remain unaccounted for. These were the kinds of financial imprudence and deliberate attempts at graft which exemplified the former leadership of the NSE. It is noteworthy that these transactions were routed through companies owned by senior officers of the Exchange

7. In 2009, ₦1.7billion of the 2008 operational surplus was distributed to Council members and employees in flagrant violation of CAMA and SEC rules which preclude the NSE from such given that the NSE is a company limited by guarantee. This happened in previous years. Other notable fraudulent transactions include the reclassification of the sum of ₦1.3billion originally expended on business travels. Of this sum, ₦953million was grouped under "Software Upgrade" and subsequently expended as against being capitalized. This is an unethical accounting practice. There were many other instances of the highlighted cases above.

8. **Inadequate Oversight by the Council:** The SEC inspection report also observed serious oversight lapses with respect to the Council of the Exchange. For example, important Committees such as the Risk and Compliance Committee last met in 2007 while the Disciplinary and Rules Committee last met in 2005. There are also multiple litigations regarding purported elections held on 6th August 2009, which election was subsequently declared a nullity by a court of law on 12th March 2010.

9. **Non-compliance with Statutory Requirements of the ISA:** The Exchange failed to submit its 2009 audited financial statements by 30th June 2010, six months after the end of the period as required by the ISA 2007.

10. **SEC Intervention:** In addition to breaches of the ISA, all these developments had significantly eroded investor confidence and undermined market integrity, two anchors of any capital market. As

a consequence and by virtue of the powers vested upon SEC by Section 13, 35, 47, 48, 49 and 308 of the Investment and Securities Act, SEC intervened to safeguard the interest of the public and asked the NSE leadership to step aside, in August 2010.

11. SEC also appointed an interim Head of Council and an Interim Administrator to stabilize the exchange as well as coordinate a credible and auditable process for the selection of a new leadership team of the NSE. The Interim Administration ensured that the Exchange complied with the statutory requirement and submitted the 2009 financial statements on 30th September 2010, less than two months after his assumption of office, and after due process including a review and approval by the Council. A review of the accounts revealed that the External Auditors gave a qualified audit opinion. The qualification was on account of the distribution of an accrued sum ₦1.2 billion to employees and council members as bonuses and share of surplus for the 2009 financial year.

12. The SEC also launched a forensic investigation to examine the allegations of financial irregularity and mismanagement. While these investigations have been concluded, the results are unavailable because the former CEO of NSE, Ms Ndi Okereke-Onyiuke and three other former staff have an injunction against making the results available.

13. The Interim Administrator stabilized the Exchange and amongst others commenced steps to replace the trading platform with a more efficient and robust system and successfully coordinated the recruitment of the new leadership team who assumed duties starting in April 2011. In April 2011, and given that the developments were also due to inadequate oversight of the Council, the SEC, and pursuant to Section 35 of the ISA 2007, directed the Council to admit some professionals, as public interest members to strengthen and professionalize the Council. Their mandate include the restructuring

of the Exchange to ensure good corporate governance practices, upgrade the trading platform and other infrastructure, guide the new management team and prepare the Exchange for demutualization including the restructuring of the legal framework. The public interest members bring independence and useful professional perspectives including law, accounting, listed company, pension fund administrator and macroeconomics and analysis. We are awaiting a response to our request for a report on the progress made by the Council in respect of the mandate that we have given the public interest members.

14. **Next Steps for the NSE:** We are pleased that the new leadership team has outlined a credible plan to build a strong stock exchange that will operate at the highest levels of integrity, offer depth and breadth in terms of product offerings and enable the realization of a USD 1 trillion market capitalization. We are equally pleased with the progress that the team has made in the last one year and have supported them through approving world class listing standards, as well as market making, short selling, and securities lending rules. We have also supported the introduction of exchange traded funds last year and look forward to working with the Exchange to introduce options and financial futures. The SEC believes that it is in the public interest to demutualize the NSE. In this respect and to enable the Commission prepare an appropriate framework for guiding the demutualization of the Exchange, the SEC established an industry wide committee in September 2011 to make recommendations to the SEC on key issues. The Committee presented its report to the Board of SEC on 12th March 2012. Also, the SEC with the support of a multi-donor initiative hosted by the World Bank received advice from the well known expert on demutualization. The Commission is currently preparing the framework and guidelines for demutualization.

Market Abuses

15. The extent and nature of the market abuses carried out between 2006 and 2008 are the primary reasons for the continuation of the investor apathy that we see today. I will give examples of some of the market abuses that the SEC investigation of the intervened banks uncovered.

16. **Afribank:** With respect to Afribank, Afribank Trustees, Afribank Registrars and their Directors, they committed various grave market infractions in share buyback schemes, made misrepresentations in the returns to the SEC to prevent detection that the Bank funded its public offer, violating Section 106 (4), and Section 110 of the ISA 2007 as well as Rule 109B of SEC Rules. Shares owned by 1,258 entities (some fictitious) and individuals were merged into fourteen accounts of nine companies some of which were owned by Afribank and its Directors. These transactions were done outside the floor of the exchange. Falcon Securities, Fidelity Finance and Spring Capital were some of the entities used.

17. **Finbank:** Between August 2006 and December 2008, the Executive team of Finbank engaged six law firms to incorporate 95 companies and transferred more than 25 billion Naira of depositors funds to nine of these companies and purchased 2.8 billion of its own shares, violating Rule 109b of SEC Rules. The Bank also violated Section 105 of the ISA 2007 which prohibits a person from creating a false or misleading appearance of active trading of a listed security.

18. **Intercontinental Bank:** Between June 2007 and December 2008, Intercontinental Bank, its Directors and principal officers engaged in unlawful share buyback schemes, buying about 3.4 billion shares using depositors funds. It violated Section 105, 106 and Section 110 of ISA 2007 as well as Section 160 of CAMA and Rule 109b of SEC Rules.

19. **Union Bank:** In 2007, Union Bank borrowed amounts totaling 30.4 billion Naira from two foreign investment banks. These funds were transferred to Union Trustees which in turn transferred the funds to Falcon Securities. In four days in November 2007, Falcon purchased 620.4 million shares worth 30.8 billion Naira ahead of a public offer/rights issue. In 2007, Falcon Securities carried out 181,088 transactions with respect to Union Bank. The shares of Union Bank rose from a low of 23.30 Naira in January 2007 to 50.33 Naira in November 2007, in other words, the share price more than doubled in 11 months.

20. **SEC's actions:** As a result of the SEC investigations with respect to the intervened banks, we instituted legal proceedings, at the Investment Securities Tribunal (IST), against 260 entities and individuals. The Commission is alleging that these individuals and entities were involved in different forms of market abuse including insider dealing, pump and dump, wash sales and share price manipulation. We are seeking declaratory orders for the illegally gained profits that were made to be disgorged so that poor retail investors who invested their life savings and pensions into the Nigerian capital markets can be restituted.

21. **Wonder Banks (aka Umana Umana, Ponzi or Pyramid Schemes):** Wonder Banks are unsustainable fraudulent schemes that use funds from new investors to pay off older investors at high rates of return, thereby quickly attracting new investors. A total of 440 Wonder banks were identified in Nigeria and these had defrauded the unsuspecting public to the tune of N106 billion. The Commission, in addition to spearheading efforts to track and bring to book operators of such scams, is also a member of an Inter Agency Committee consisting of representatives of financial services regulators and law enforcement agencies such as the Central Bank of Nigeria (CBN), Nigeria Deposit Insurance Corporation (NDIC),

Economic and Financial Crimes Commission (EFCC), Corporate Affairs Commission (CAC) and the Nigeria Police (NP). So far, the Committee had obtained court orders to wind up the identified outfits. The Committee continues to make more recoveries as investigations progress. Furthermore, promoters of the schemes are also being handed over to the relevant law enforcement agencies for criminal prosecution. Specifically, the EFCC is about to commence legal action against 71 (seventy one) of such illegal entities.

22. Building a World Class Capital Market:

In March 2009, the industry-wide committee established by the Board of SEC submitted a report entitled 'Nigeria's capital market: Making world-class potential a reality. This report articulated the elements of a world class capital market. SEC endorsed the recommendations made, and I developed a roadmap for building a world class capital market when I joined SEC in January 2010. This is because we believe that a world class capital market is crucial to Nigeria as it seeks to better leverage its wealth in terms of natural and human resources to realize its full potential and address socio-economic challenges. We have since January 2010 been building a world class capital market that will enable the public sector finance important projects including to address huge infrastructure needs, provide businesses with medium to long term funds, and enhance the business climate and operating environment. We define a world class market as one that engenders investor confidence, has breadth and depth in terms of product offerings, is characterized by market integrity, has a sound regulatory framework, a strong and transparent disclosure and accountability regime, fosters good corporate governance and is a fair, robust and efficient market place. We have also observed that, among various capital market stakeholders, there is a common vision and a greater understanding

of the importance of building a world class capital market. Let me outline a few of the initiatives we have taken over the last two years in respect of each of the elements of a world class capital market.

23. Strengthened Enforcement and Enhanced Regulatory Oversight:

In addition to our intervention in the NSE and the institute of legal proceedings against 260 entities and individuals, we have taken various enforcement actions against different capital market stakeholders with respect to inadequate filing of periodic returns and other market infractions. We also realize that the cooperation of law enforcement agencies is very vital to the overall success of our enforcement actions. We therefore have strengthened our relationships with the Nigerian Police and with the Attorney General to enable faster dispensation of cases.

24. Changes to SEC Rules and Regulations: Our assessment of the crisis revealed that the absence or inadequate rules contributed to the scale of the crisis in 2008 and 2009. For example, the absence of adequate margin trading regulation fueled heavy margin trading exposure. The SEC along with CBN jointly issued new margin trading rules for operators and banks. We introduced some new rules to encourage the emergence of new products, strengthen the protection of customer assets in the market, enhance market liquidity (market making, short selling and securities lending) and improve financial reporting and governance of public companies. We have amended some rules and expunged others to ensure alignment with international best practice. These new rules and amendments have helped shape behavior, set standards and create a level playing field. They are also promoting orderly trading, transparency and market efficiency.

25. Code of Corporate Governance and International Financial Reporting Standards (IFRS): We revised the 2003 corporate governance code based on the recommendations of an industry

wide committee that the SEC Board set up in September of 2008. The new code became effective on 1 April 2011 and is comparable to internationally acclaimed codes. Since the first quarter of 2011, the SEC has been working with listed companies to support adoption of International Financial Reporting Standards (IFRS).

26. **Deepening and Broadening Product Offerings:** Since January 2010, SEC has accelerated its support for new product development. The focus has been on fixed income (bonds), collective investment schemes (CIS), Islamic finance products and exchange traded funds. Specifically, the SEC has worked assiduously with various stakeholders to develop a strong and virile bond market. To this end, the SEC is enhancing the framework for bond issuance and introduced rules on book building and shelf registration and simplified disclosure rules. These new rules have shortened the average issuance time line in the market and improved the price discovery process for securities. The tax regime was also revised to eliminate the tax discrimination which previously existed in favour of sovereign bonds and against corporate and sub-nationals. The Commission has been promoting collective investment schemes (CIS) as an alternative for retail investors who may not want to invest directly but rather take advantage of the expertise of financial experts. In view of the increased interest in CIS, we have intensified the monitoring of fund managers and trustees and encouraged the establishment of an industry trade group. While there are about 40 CIS schemes covering, bonds, equity, balanced, guaranteed, money market, Islamic and Real Estate Investment Trusts (REITs), Nigeria has the potential to have more funds and more assets under management given its size. In addition to Islamic funds, we expect to see Sukuk bonds since some state governments have highlighted plans to issue this year.

27. **Capital Adequacy for Capital Market Operators:** One of the lessons from the 2008/2009 market crisis was the need to address

capital adequacy of stock broking firms which was a major structural weaknesses of market operators. The N70million threshold was inconsequential relative to the assets created by these firms which ran into billions. To prevent the occurrence of prudential and systemic risks to which this low threshold might translate, the SEC has engaged operators and agreed on clearer and stronger capital adequacy standards.

28. Given that the approach to regulation would migrate from compliance based regulation to risk based regulation, risk based parameters were factored into the modification to capital adequacy standards. Risk-based capital (RBC) represents an amount of capital based on an assessment of risks that a company should hold to protect investors against adverse developments. A capital adequacy threshold would be determined after due consultation.

29. **Complaints Management:** Complaints management has been a major challenge given the absence of a structured and overarching framework for channeling and managing complaints. Even more tasking was the absence of turnaround standards for complaints resolution and escalation triggers. As such complaints which ought to have been addressed either by alternate dispute resolution mechanisms e.g. the SROs or the IST were escalated directly to the Commission.

30. Recognizing the strain the current arrangement imposed on our performance in this area of activity, the Commission recently developed an enhanced complaints management programme which will be deployed and launched within 2012. Leveraging technology, automation is a major feature of the new framework which allows delineation and proper management of whistle blowing and complaints.

31. **Investor Protection Fund:** Investors are the ultimate risk takers in the market. While the ISA 2007 does not guarantee investments, it does however outlines a channel of recompense for pecuniary losses through the establishment of two types of funds to cover investors. On one hand, the regulator, SEC is empowered to create a

National Trust Scheme (NTS). On the other; Securities Exchanges such as the Nigerian Stock Exchange (NSE) are required to float an Investor Protection Fund (IPF).

32. Section 13(k) of the Act empowers the Securities and Exchange Commission to set up a fund to compensate investors for other pecuniary losses suffered besides those which arise on account of insolvency or bankruptcy of a dealing member and defalcation committed by a dealing member in relation to securities, monies or properties entrusted to it by an investor. Compensation for the specific losses – insolvency and defalcation—are the exclusive responsibility of the Nigerian Stock Exchange under ISA 2007 Section 195.

33. Indeed, the Nigerian Stock Exchange had established an investor protection fund in fulfillment of the provisions of ISA 2007. However, efforts are on ongoing to operationalize the fund. On its part, the Commission incorporated a trust scheme called National Investor Protection Fund in 2011. The fund is designed to offer a safety net for investors who may suffer pecuniary losses as prescribed by the ISA. The Corporate Affairs Commission recently approved the SEC's scheme and gave clearance for the scheme to be operationalized. Funds recovered from operators against whom the Commission had filed legal actions before the Investments and Securities Tribunal (IST) in 2010 will constitute seed money to fund the scheme. The fund will be activated fully within 2012 once the modalities and framework for seamless operations are finalized.

Investor Education and Capacity Building:

34. **Investor Education:** The Commission believes that an educated investor is a protected investor as he is better able to take informed investment decisions. The Commission has thus, outlined various investor education strategies and outreach programmes to improve the understanding of the retail investor and restore investor confidence. For Example, in July 2011, the Commission collaborated with the Rivers State Government and successfully hosted an investor/issuer education outreach for the government and people of Rivers State. Over 1000 participants were offered critical insights

into the market as an ensemble of capital market experts participated over the interactive sessions presided over by the SEC. This was done to educate the citizenry and government of the state on the benefits of investing in and sourcing funds from the capital market.

35. To commemorate 50 years of capital market regulation in Nigeria, the Commission on October 31 2011, organized an international investor forum in Abuja under the theme “Nigeria, the preferred investment destination.” The event was well attended by leading international and local investors, as well CEOs and financial sector leaders. It showcased the wealth of investment opportunities in Nigeria. At the October 31, 2011 event, the Commission unveiled a Nollywood movie, titled “Breeze”. The goal of the Commission, amongst others, was to leverage the following enjoyed by Nollywood as a platform to reach a wider spectrum of people. “Project 50,” as the series of events marking the Golden Jubilee is called, will culminate in a bigger investment forum in October 2012.

36. The Commission also believes that it is important to inculcate a culture of saving and investing in the younger generation. The Commission's investor education strategy is therefore designed to appeal to various target groups including students, given the need to catch them young. The strategies have included out-reach and town hall meetings with the public, establishment of capital market clubs in secondary schools, quiz programmes, introduction of capital market studies in universities and publications of various types.

37. Given the centrality of social media to stakeholder management in the 21st century, the Commission has incorporated the use of Facebook and Twitter into the stakeholder management matrix. The deployment of this neo-media has enhanced public awareness on the market and also created a platform for an increased number of Nigerian and foreigners alike to interface with the Commission directly.

Strengthening of SEC

36. **Human Capital** – The diagnostic study undertaken by Accenture in 2008 on the Commission revealed human capital as a major weakness. According to the report, less than 20% of SEC staff worked in core operational areas of the Commission, a sharp contrast from 70% as obtains in more advance markets. The report expressly stated that “It is unlikely that current staffing in terms of skills, competence and abilities, deployment and utilization (at the SEC) can deliver a world class market regulator”

37. To address this drawback, the SEC in December 2011, engaged 52 new young professionals in relevant areas of core function comprising Lawyers, Economists, Accountants. This is to fortify the personnel strength, and add vigour to the activities of the Commission. The recruitment exercise tagged “Young Professionals’ Programme”, was the result of a very vigorous and transparent process which ensured the engagement of only the best and the brightest of the applicants. The new members of staff are expected to will assume full duties in the first quarter of 2012.

38. The Commission continues to strengthen staff capacity by enhancing the quality and frequency training for staff.

39. **Specialized support** – The Commission appointed a Fixed Income Adviser, under the IFC/ESMID programme, in 2010 to assist in regulatory matters, infrastructure as well as capacity building with regards to bond issuance. The adviser’s mandate was essentially to develop the secondary bond market and other related fixed income activities through improved efficiency in issuance process.

40. It is important to note that a number of the recommendations of the Adviser were adopted and implemented in 2011. Furthermore, the Commission, in conjunction with other key stakeholders in the

market obtained tax waivers from the Federal Government of Nigeria on all categories of bonds.

41. **Compensation and Employee welfare** – We have striven to ensure that staff remuneration is competitive and aligns with industry standards. Nonetheless, efforts are ongoing to enhance its competitiveness within the industry and beyond. The Commission aims to continually attract and retain the best and brightest minds available.

42. **Enhancing organizational effectiveness/internal controls:** Management has taken active steps to minimize incidence of leakages and inefficient utilization of the Commission's resources. This has been achieved in part by heightening the alertness of our internal control mechanisms and adherence to a stringent regime of cost optimization.

Our accounting, audit and financial reporting processes have been aligned with international standards. These steps derive from our world class aspirations which demands discipline and financial probity.

43. **Technology:** Hitherto, the absence of productivity tools had significantly impeded our capacity to regulate the market. Naturally, the lack of these tools contributed to operational inefficiency, high operational cost and slow turn around.

44. To overhaul the decrepit technology platform, new and modern productivity tools have been acquired along with accompaniment to automate its processes. Since the retooling exercise began, the Commission has improved its cost efficiency, minimized its turn-around-time, and enhanced operational efficiency. The Commission acquired an Enterprise Resource Planning (ERP) software to computerize all administrative and financial management processes. This was in addition to the development of ERRA to

enhance the Commission's registration and returns rendition and analysis processes. While ERP will be deployed within the next quarter, the ERRA on the other hand will be deployed before end of 2012.

45. **Reforming the Capital Market Committee**: Given the emerging realities in the market there was an urgent need to reform and restructure the Capital market Committee (CMC), the industry-wide stakeholder forum which seeks to deliberate on capital issues. The major change to the CMC was the reconstitution of the sub-committee which are now more market focus and more efficient. Also the level of involvement of participants and the quality of the participation have both improved. The new Committee now have clearly defined terms of reference to guide their activities and deliberations. More importantly, a group was also set up to undertake advocacy activities on behalf of the Committee. Altogether, the revamping the Capital Markets Committee has made it to better reflect on the current needs of the market.

47. Another major development is the introduction of an annual retreat which would afford all stakeholders the opportunity to take stock of developments in the preceding year in a wholesome manner with a view to plan for the coming year.

46. **Enhancing Coordination amongst Regulators**: One of the major challenges which characterized the pre-crisis financial services industry was the lack of coordination and cooperation amongst the regulators. The void in regulatory corporation presented fertile ground for regulator arbitrage. Indeed, the level of collaboration across regulatory stakeholders was at its barest minimal at the time.

47. Concerned stakeholders have since realized the need for regulators to work together for a coordinated and more result oriented approach to financial services regulation given the

imminent and widespread effects of the prudential and systemic risk whenever they occur. The FSRCC has thus witnessed renewed interest and vibrant participation by all members

48. The Commission has continued to participate actively in the functions of the FSRCC. A major benefit of these collaborations was the joint investigation exercise between the Central Bank, the Nigerian Deposit Insurance Corporation and the SEC in 2009 which revealed the rot in the banking sector and led to legal actions to this effect. Under the instrumentality of the FSRCC, the CBN and SEC partner to issue guidelines for Margin Lending activities in Nigeria, provision which hitherto were non-existent.

49. Aside from this, we have also cooperated with other relevant regulators outside the FSRCC. Such collaborations included partnership with the Nigerian Police (NP), the Economic and Financial Crimes Commission (EFCC), the Independent Corrupt Practices Commission (ICPC) and the Ministry of Justice.

50. **International Collaborations:** We maintain a strong leadership presence in the global securities regulatory scene. We are appendix A signatory to the International Organization of Securities Commissions (IOSCO) multi-lateral memorandum of understanding. IOSCO is the global standards setter for securities market regulation. It is noteworthy that Nigeria leads the Africa Middle East Regional Committee (AMERC) of IOSCO as Chairman. Our membership of IOSCO allows us to benefit from the experiences of regulators from other jurisdiction.

Recommendations

51. **Intervention by the Federal Government:** Given the importance of the Nigerian capital markets to the Nigerian economy, we welcome your support in encouraging the Federal Government to support the Nigerian capital markets through investing in the

secondary market. According to one of the research analysts, Nigeria has the lowest price–earnings ratio and therefore has the highest room for appreciation. This represents an opportunity for entities such as the proposed Sovereign Wealth Fund (SWF) to invest in the market profitably.

52. **Investment by Institutional Investors:** SEC welcomes the planned review of the Pension Investment Regulations to encourage greater investing by PFAs in equities. The exposure draft of the regulations suggests that the maximum exposure that will be permitted by PENCOM has been raised from 25% to 50%.

53. **Enabling access to capital:** No economy has developed without medium to long term funds, principally obtained from the capital markets. Nigeria's economy is however constrained by the limited patronage of the capital markets either because the stock market does not sufficiently reflect the Nigerian economy or that medium to long term fixed income securities are not being issued by public and private sector entities. We will therefore appreciate your support as we advocate for large companies notably in the telecommunications, and oil and gas sectors to be listed. We would also appreciate support for privatized entities to be listed on the stock exchange since listing enhances accountability and transparency. In this respect, we believe it will be useful for the planned privatization of power generation and distribution assets to include provisions for listing. Agriculture makes up 40% of GDP and employs 70% of Nigerians, yet less than one percent of listed companies represent this sector. Small and medium enterprises must be encouraged to leverage the capital markets capital given their critical role in addressing unemployment challenge, particularly amongst youth. Equally, yield curves for sub-national bonds and for corporate need to be extended to reflect the long term nature of key developmental projects.

54. **Abuja Securities and Commodities Exchange (ASCE)**: The Ministries of Finance, and Trade and Investment, Central Bank of Nigeria and the Securities and Exchange Commission are currently in collaborative efforts towards the reactivation of the ASCE. This is with a view to aligning the structure and operations of the Exchange with the Agricultural Transformation Agenda of the federal government. Discussions have centered amongst others, around the eventual privatization of the Exchange. An action which is underscored by the fact that ASCE was originally listed for full privatization under the Public Enterprises Privatisation and Commercialisation Act of 1999.

Recommended Statutory Amendments

55. Companies and Allied Matters Act (CAMA)

- a. *Electronic Issuance of Shares and Certificates*: The CAMA was enacted in 1990 before the age of widespread digital technology. **Section 117** gives companies the general powers to issue shares. **Section 125** makes provisions relating to allotment of shares and issuance of share certificates. We recommend amendments to allow companies electronically issue shares through CSCS accounts. The law should allow electronic application for shares, electronic allotment and transfers of shares. This should lead to the dematerialization of paper share certificates. Generally review sections **114 to 165**, CAMA.
- b. *Electronic Service of Notices*: **Section 220** provides for service either by giving the member personally or sending it to him by post or to his registered address. Where the member has no registered address within Nigeria, the section allows service to “the address, if any, supplied by him to the company for the giving of notice to him.” We recommend that CAMA be specifically amended to provide for service of notices electronically in the first instance where a member has provided an email address as a means of communication. Section 220(1) should allow sending of notices “by post or

electronic means," and the definition of registered address should include an electronic address.

- c. *Electronic Register of Members*: Sections 83 – 90 provide for the keeping of register of members. Sections 83 and 84 should recognize the use of electronic registers (as a mandatory back-up) and provide for a location of that register securely on independent servers or disks not in the premises of the company or the Registrar.
- d. *Superiority of ISA to CAMA*: Section 312 of the ISA says the ISA is superior to CAMA and other enactments on capital market matters. To avoid ambiguity, an itemization of what amounts to capital market matters may be necessary.
- e. *Section 379 on Dividends*: Should be amended to allow electronic payment of dividends. After a grace period, all payments should be by electronic means.
- f. *CAMA on Demutualization*: As the Nigerian Stock Exchange considers demutualization, which means transiting from a member-owned to a shareholder-owned entity, the CAMA is one of the obstacles on the way. The provisions on converting from a company limited by guarantee to one limited by shares are sparse. Changing the law on conversion of corporate forms is crucial.

56. Land Use Act and Housing Finance

It is estimated that there is a deficit of nearly 18 million housing units in Nigeria. This is a significant opportunity to provide shelter, collateral for businesses and develop the Nigerian capital markets. However, the principal legal instrument contains major obstacles to investment in real estate.

- i. Governor's Consent: For every transfer of title to land, whether by way of conveyance or mortgage, the governor's consent is required under the Land Use Act.

This has generally been identified as the biggest single impediment to investment in the housing sector. There is need to remove this impediment, and allow freer transfer of land

- ii. Title to Land: Many investors would prefer the reconsideration of the provision granting absolute title to the State Governors.

57. Unclaimed Dividends

- i. Presently the figure for unclaimed dividend is N50.2 billion. This figure has been on the rise since 2005, when it stood at only N6.5 billion.
- ii. In 2002, the Commission constituted an industry wide Committee to examine among others, issues relating to unclaimed dividend in Nigeria.
- iii. The Committee among others recommended the setting up of an **Unclaimed Dividend Trust Fund** and drafted the **Unclaimed Dividend Trust Fund Bill**.
- iv. The draft bill was forwarded to the National Assembly through the then Attorney General and Minister of Justice. However the Bill was not passed into law.
- v. The proposed Bill as drafted by the Committee provides in Part 1 for the establishment of the Unclaimed Dividends Trust Fund into which unclaimed dividends and such other funds specified by the Act shall be paid. The draft also provides for a Board to be nominated by the Minister, subject to the confirmation of the President, to oversee the activities of the fund. The Board is also to act as Trustees to the Fund.
- vi. The Commission had also in 2008 launched its e-process by introducing e-dividend and e-bonus. Investors by these processes are expected to open accounts with Central Securities Clearing & Settlement (CSCS) Ltd, into which their bonuses would be paid and they are also expected to communicate to their Registrars the bank account numbers into which their dividends would paid directly.
- vii. If enacted into law, it is hoped that these processes, will eliminate the issue of unclaimed dividends in the long run.